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In re Application of :
Louis P. Vezina et al :
Serial No.: 09/678,303 : PETITION DECISION
Filed: October 3, 2000 :
Attorney Docket No.: 1912-0303PUS1 :

This is in response to the petition under 37 CFR 1.181, filed April 1, 2005, requesting withdrawal of abandonment based on timely filing of a reply.

A review of the file history shows that the Office mailed a Final Office action to applicants on June 3, 2003, setting a three month shortened statutory period for reply. Applicants replied by facsimile on September 24, 2003, including a request and fee for a one month extension of time. On December 18, 2003, the examiner mailed a Notice of Non-Compliant Amendment to applicants setting a one month time period for reply and indicating extensions of time could be obtained under 37 CFR 1.136(a). Applicants replied on January 15, 2004, by facsimile with a compliant amendment. An auto-facsimile reply was generated by the Office upon receipt. On July 14, 2004, the examiner mailed a Notice of Abandonment to applicants indicating the compliant amendment was received outside of the maximum six month statutory period for reply allowed. The examiner indicated the amendment had not been entered, but gave no reasons for non-entry.

Applicants filed this petition on April 1, 2005, concurrently with a Notice of Appeal.

Of note initially is that this petition is untimely. 37 CFR 1.181(f) states that a petition from an examiner's action must be filed within two months of the action complained of. Applicants have delayed over eight months since receiving the Notice of Abandonment before filing this petition.

Of further note is that applicants' supplied copy of the Notice of Abandonment mailed by the examiner is hand dated on the Notice as 12 July 04 and has a printed mailing date of 07/14/2004, not 07/14/2002, as stated by applicants.

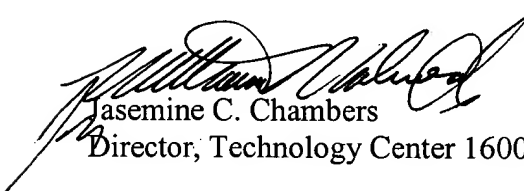
The status of the amendment after Final Office action is unclear in that the examiner has not indicated whether it is sufficient to overcome any or all rejections of record, only that it has not been entered, as stated on the Notice of Abandonment. The mailing date of the Notice of Non-

Compliant Amendment was after the six month statutory period for submitting an acceptable reply to the Final Office action had expired. An acceptable reply is one of (1) a Notice of Appeal, (2) an amendment which places the application in condition for allowance, or (3) RCE papers. While applicants submitted an amendment the examiner did not complete review the amendment until after the six month statutory period had expired. The amendment did not place the application in condition for allowance. The examiner's mailing of a Notice of Non-Compliant amendment was in error. The examiner should have mailed an Advisory Action to applicants followed by a Notice of Abandonment. In order to facilitate applicants' decision as to whether to revive this application an Advisory Action will be mailed in due course.

The petition is **DISMISSED**.

The application remains abandoned. This application may only be revived by filing of a petition under 37 CFR 1.137(b). Any such petition must be filed within TWO MONTHS of the mailing date of this decision in order to be considered timely and may, in view of the delay noted above, require submission of a terminal disclaimer as a condition for revival..

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 571-273-8300.



Jasmine C. Chambers
Director, Technology Center 1600